

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

ILLINOIS COMMERCE COMMISSION

ON ITS OWN MOTION

VS.

PEOPLES GAS LIGHT AND COKE COMPANY)

Reconciliation of revenues collected under gas adjustment charges with actual costs prudently incurred.

Chicago, Illinois

August 4, 2004

Met pursuant to notice at 11:00 a.m.

BEFORE:

MS. CLAUDIA E. SAINOT, Administrative Law  
Judge.

APPEARANCES :

MR. JAMES E. WEGING and  
MR. SEAN R. BRADY  
160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60601  
Appearing for Staff;

MS. JULIE L. SODERNA,  
STEVEN WU and  
MR. ROBERT J. KELTER  
208 South LaSalle Street, Suite 1760  
Chicago, Illinois 60604  
Appearing for the Citizens Utility Board;

1 APPEARANCES: (CONT'D)

2 MR. RANDOLPH R. CLARKE  
3 100 West Randolph Street, 11th Floor  
4 Chicago, Illinois 60601  
5 Appearing for the People of the State of  
6 Illinois;

7 MR. RONALD D. JOLLY and  
8 MR. CONRAD R. REDDICK  
9 30 North LaSalle Street, Suite 900  
10 Chicago, Illinois 60602  
11 Appearing for the City of Chicago;

12 McGUIREWOODS, LLP, by  
13 MR. THOMAS R. MULROY,  
14 MS. MARY KLYASHEFF and  
15 77 West Wacker Drive, Suite 4400  
16 Chicago, Illinois 60601  
17 Appearing for North Shore Gas Company and  
18 Peoples Gas Light and Coke Company;

19  
20  
21

22 SULLIVAN REPORTING COMPANY, by  
Tracy L. Overocker, CSR



1 JUDGE SAINSOT: By the authority vested in me  
2 by the Illinois Commerce Commission, I call  
3 Docket No. 01-0707. It is the Illinois Commerce  
4 Commission on its own motion versus Peoples Gas  
5 Light and Coke Company. It is a reconciliation  
6 of revenues collected under gas adjustment  
7 charges with actual costs prudently incurred.

8 Will the parties identify themselves for  
9 the record.

10 MR. BRADY: Appearing on behalf of the Staff  
11 of the Illinois Commerce Commission, Sean R.  
12 Brady and James E. Weging, 160 North LaSalle  
13 Street, Suite C-800, Chicago, Illinois 60601.

14 MR. CLARKE: Appearing on behalf of the People  
15 of the State of Illinois, Randolph Clarke, 100  
16 West Randolph Street, 11th Floor, Chicago,  
17 Illinois 60601.

18 MS. SODERNA: Appearing on behalf of the  
19 Citizens Utility Board, Julie Soderna, Stephen Wu  
20 and Robert Kelter, 208 South LaSalle Street,  
21 Suite 1760, Chicago, Illinois 60604.

22 MR. JOLLY: And on behalf of the City of

1 Chicago Ronald D. Jolly and Conrad R. Reddick,  
2 30 North LaSalle, Suite 900, Chicago, Illinois  
3 60602.

4 MS. KLYASHEFF: Appearing for the Peoples Gas  
5 Light and Coke Company, Thomas Mulroy and Mary  
6 Klyasheff, McGuireWoods, 77 West Wacker, Chicago  
7 60601.

8 JUDGE SAINSOT: Any further appearances?

9 (No response.)

10 Let the record so reflect.

11 Okay. I'm going to start off with the  
12 CUB letter I received, which I take it was served  
13 on everybody else; is that correct?

14 MS. SODERNA: Right.

15 MR. JOLLY: It was served on the City --

16 MR. BRADY: What was the date of the letter?

17 MS. KLYASHEFF: Which date?

18 JUDGE SAINSOT: July 30th -- you mean there's  
19 more than one?

20 MR. JOLLY: No. There's only one. It should  
21 have been served on --

22 JUDGE SAINSOT: Right. Was that served on

1 Peoples?

2 MS. KLYASHEFF: The clarification for the  
3 protective order?

4 MR. BRADY: Now we know what you are talking  
5 about.

6 MS. KLYASHEFF: There are other letters  
7 floating around, that's the confusion.

8 JUDGE SAINSOT: Okay. And I have the fortune  
9 of only having one letter.

10 MS. SODERNA: Sorry, yeah, I didn't know which  
11 one you were referring to. Yes, that was served  
12 on the service list.

13 JUDGE SAINSOT: You know, to start off with,  
14 yes, the per day -- you're right, the per day  
15 thing should have been out, that was a mistake.  
16 I don't know how that happened but I will change  
17 that.

18 Now, as to how this relates to the  
19 confidentiality agreement, it was my  
20 understanding that counsel for Peoples was not  
21 going to enforce the confidentiality agreement  
22 with regard to the February 10th discovery; is

1       that correct?

2           MS. KLYASHEFF:  It was not clear to me, just  
3       as it was not clear to CUB, if the protective  
4       order was in addition to or in lieu of the  
5       protective agreement with respect to post  
6       February 10th, 2004.

7           MR. MULROY:  Judge, tell me again why it makes  
8       a difference?

9           JUDGE SAINSOT:  It makes a difference -- as  
10      far as I can tell and there may be other things  
11      too, but as far as what gets designated  
12      confidential and the procedure to use.

13          MR. MULROY:  Because -- I just want to make  
14      sure that everybody is on the same page.  The  
15      procedure that we're suggesting is if something  
16      has been marked confidential, they give us the  
17      Bates number either by e-mail or any other way  
18      they want to and we respond by saying, We remove  
19      the confidentiality stamp.  If we say, We won't  
20      remove the confidentiality stamp, then we present  
21      the document to you?

22          JUDGE SAINSOT:  Right.

1           MR. MULROY:   Now, is there a different  
2   procedure in the confidential -- protective  
3   order?

4           JUDGE SAINSOT:   It's slightly different and  
5   are -- maybe it's time for you to speak up and  
6   share your concerns somewhat.

7           MR. JOLLY:   I think we indicated at the last  
8   hearing that it seemed -- as you indicated, there  
9   are two separate procedures and we didn't know if  
10   we -- you know, do we have to go through both  
11   sets of procedures if we intend on using  
12   something in a publically-filed document?

13          JUDGE SAINSOT:   Yeah, I think we should have  
14   it clear that the February 10th discovery -- I'm  
15   not talking about outstanding discovery that  
16   you're still responding to, that's not the  
17   February 10th discovery.   I'm talking about the  
18   limited February 10th -- it may not seemed  
19   limited to you -- but the discovery that was  
20   reopened on February 10th, not anything that  
21   was -- that may have been outstanding at that  
22   point, but that was specifically addressed at



1     that point and I -- because I guess there was  
2     some outstanding discovery at that point?

3           MR. BRADY:   There was some ongoing discovery  
4     that was propounded shortly before that hearing  
5     and then was produced immediately thereafter --  
6     within a week after that hearing and then there  
7     were some follow-up questions, yes.

8           JUDGE SAINSOT:   I shouldn't say discovery was  
9     reopened because, apparently, it was ongoing at  
10    that point, but -- so I think just for purposes  
11    of clarification and so we're all on the same  
12    page, if I could get a statement from Peoples  
13    that you would not enforce the confidential --  
14    the procedures in the confidentiality agreement  
15    with regard to the February 10th discovery, I  
16    think that might move things along.

17          MR. MULROY:   We're trying to move things along  
18    and make it easy.   Maybe one of you folk can tell  
19    me, Randy, what the difference is between what I  
20    just described and the protective order that --

21          MR. CLARKE:   I'd be happy to attempt to  
22    address that.   One of the differences that leaps

1 to mind is the language in the protective order  
2 contains a definition of proprietary and  
3 confidential and leaves it to the parties to  
4 parse and apply that definition.

5 And if I recall correctly, from the last  
6 status hearing we had, what you indicated, your  
7 Honor, with regard to the confidential  
8 designations is that they would become  
9 meaningless if the information, you know, on the  
10 page marked confidential didn't meet that  
11 definition and we were supposed to kind of just  
12 make the call, so that's different from sending  
13 you an e-mail with a Bates number or a range of  
14 Bates numbers.

15 MR. MULROY: Which would you prefer?

16 MR. CLARKE: That's another excellent question  
17 that I can take a crack at. I would prefer using  
18 confidentiality standards that have been adopted  
19 by the Commission in the past. Particularly, the  
20 standards that have proceedings conducted in an  
21 open manner and have the default and the  
22 assumption be that information introduced in a

1 Commission proceeding be considered  
2 non-confidential and that if the party producing  
3 the information, which will be Peoples, wants do  
4 designate something confidential, that party is  
5 responsible for making a specific evidentiary  
6 showing, a factual showing for why that  
7 particular piece of information deserves  
8 confidential treatment and there's some standards  
9 that govern that such as --

10 JUDGE SAINSOT: We're not talking about  
11 evidence now.

12 MR. CLARKE: I'm sorry, I was just responding  
13 to what we would prefer and just explaining the  
14 legal standards that we feel apply.

15 MR. MULROY: I understand that procedure and  
16 I've been through that procedure. I thought that  
17 the problem that we were presented with here was  
18 the volume of documents. If I take the 47 boxes  
19 and review them -- each one of them in open forum  
20 here -- not open forum, it would be closed until  
21 the judge ruled -- that's going to consume a lot  
22 more time, I thought, than having you identify

1 the ones you were interested in and us waiving  
2 the confidentiality stamp if it was appropriate,  
3 that's why I suggested this procedure. I'm  
4 trying to streamline it, but I don't want to do  
5 anything that you guys think is somehow unfair.

6 MR. JOLLY: I guess our letter -- the point of  
7 the letter was to try and clarify what exactly  
8 the ALJ ruled last time.

9 And to respond to your question, I think  
10 one difference between the confidentiality  
11 agreements and the protective order, as Randy  
12 alluded to, is that there's a specific definition  
13 of proprietary that the ALJ included in her order  
14 that defines the types of documents that are  
15 worthy of protection; whereas the confidentiality  
16 agreement use the word "confidentiality" which, I  
17 think, could denote a broader type of document  
18 that might be subject to protection.

19 And, so, I guess if both the  
20 confidentiality agreements are in place and the  
21 proprietary agreement, it seems to me that  
22 there's, perhaps, some confusion that we're not

1     certain -- you know, if we think a document isn't  
2     proprietary, then we have to make a second  
3     judgment, is this confidentiality -- does the  
4     word "confidential" mean something else and do we  
5     have to go to you for that to, you know, seek  
6     your, you know, your thoughts on that matter?

7           MR. MULROY:   Well, yes.   That was my thinking  
8     but maybe it's misplaced.   My thinking was, it  
9     would not be burdensome for you to send me a  
10    document number and for us to say, We remove the  
11    confidential or proprietary nature of it.

12          MR. JOLLY:   I thought that the judge ruled at  
13    the last hearing that, in fact, we wouldn't have  
14    to do that and that the -- my understanding of  
15    the ruling was that the protective order  
16    superceded the confidentiality agreements and  
17    that the only agreement -- the only procedures  
18    that we had to follow or go through were those  
19    that are defined by the protective order and not  
20    those in the confidentiality agreement because we  
21    specifically asked that question.

22          MR. MULROY:   Could you give us -- could you

1     give me an example because I'm the one whose not  
2     going fast enough here. Our concern is that  
3     confidential and proprietary information not be  
4     disclosed in public -- in the newspaper. We gave  
5     you everything we had so that you could look at  
6     everything that we have. Our concern was also  
7     time, that it's going to be a lot faster for us  
8     to look at the documents -- number that you're  
9     interested in and remove the proprietary nature,  
10    confidentiality nature of it if it's appropriate.

11                 What we're worried about, because of the  
12    speed with which we comply with this discovery is  
13    that some of our proprietary information may  
14    become public which could be disastrous for the  
15    Company. That's the problem I face and that's  
16    what I'm trying to solve.

17                 MS. SODERNA: The question is, does the  
18    proprietary -- does the protective order satisfy  
19    your concerns and why -- you seem to be  
20    indicating that it does not and that you want the  
21    additional protection of the confidentiality --  
22    the existing confidentiality agreements with the

1 parties. And I guess our question is what the  
2 judge intended.

3 MR. MULROY: I know what your question is but,  
4 no, I'm not -- I'm not suggesting one or the  
5 other. I'm just trying to protect the Company's  
6 confidential papers here and I'm confused as to  
7 why there's even an issue, I guess. I'm missing  
8 the issue. I'm missing the issue.

9 MR. JOLLY: The issue seems to me that the  
10 terms used in the different documents aren't  
11 necessarily -- aren't necessarily defined the  
12 same way. Confidential strikes me that it could  
13 be a broader term than proprietary and privilege.

14 JUDGE SAINSOT: I think he's right there. For  
15 example, employment records could be very  
16 confidential and they're not proprietary.

17 MR. MULROY: Obviously -- nobody is  
18 disagreeing with that. I mean, it doesn't matter  
19 whether it's marked attorney/client privilege,  
20 work product, proprietary, I'm suggesting the  
21 easiest way to do this is to identify the  
22 document you want to use and see if we will waive

1 the designation.

2 MR. JOLLY: And that's the process that we  
3 plan -- we're not saying that we're not going to  
4 use that process --

5 MR. MULROY: That's all I care about.

6 MR. JOLLY: -- the question becomes which  
7 process do we use? Do we use that defined in the  
8 protective order which only applies to  
9 proprietary agreements or do we have to use both  
10 that's defined in the protective order and in the  
11 individual confidentiality agreements?

12 MR. MULROY: Does this solve it? We use it in  
13 connection with attorney/client privilege,  
14 proprietary and confidential?

15 MR. JOLLY: No, because the protective order  
16 only applies to proprietary documents. And  
17 that -- our understanding of the ALJ's ruling at  
18 the last hearing was that the only document --  
19 that the protective order superceded the  
20 individual confidentiality agreements and the  
21 only documents that we had to send to you if we  
22 intended on using them as part of our testimony



1     that we publically file or in whatever manner,  
2     that it would be those documents which may  
3     contain proprietary information.

4           MR. MULROY:   You mean, if something is marked  
5     confidential and you determine it's not  
6     proprietary, you can use it in public?

7           MR. JOLLY:   Yes.

8           JUDGE SAINSOT:  After you get them to waive  
9     it.

10          MR. MULROY:   No.  They're saying without the  
11     waiving.

12          JUDGE SAINSOT:  Is that --

13          MR. JOLLY:    I mean, I thought part of the  
14     process that you had outlined was with the hope  
15     that if -- if a document clearly didn't contain  
16     proprietary information that we did not have to  
17     go through the process.

18          JUDGE SAINSOT:  No, that's not what the order  
19     says.

20          MR. JOLLY:    Okay.

21          JUDGE SAINSOT:  And what I did say was if the  
22     document was already public you could use it;

1 but, you know, all I'm trying to do is get you in  
2 a position where things are moving and I don't  
3 understand -- because you're leaving me in a  
4 situation where I would have to order counsel for  
5 Peoples to go through, what, 47 boxes and a DVD  
6 that is so big that our computers don't read it.

7 MR. JOLLY: I don't think that's what we're  
8 asking right now. I think all we're asking is a  
9 clarification of what you ruled at the last  
10 hearing. I think, you know, we argued, we made  
11 our position known and that --

12 JUDGE SAINSOT: Right.

13 MR. JOLLY: -- in that hearing and you  
14 rejected it. I think what we're saying here  
15 is -- and my understanding was, the whole point  
16 of the protective order was to try and streamline  
17 this process so that we could move faster.

18 And one of -- my understanding of what I  
19 thought that the protective order was supposed to  
20 do was to provide a more limited definition of  
21 documents that would fall under a protective  
22 order as opposed to every document that's stamped

1 confidential. Because, again, going back to what  
2 we said, you know, at the hearing, there are a  
3 lot of things -- they stamped every page  
4 confidential, I understand why they did it, they  
5 had a lot of documents, they didn't want to make  
6 a document-by-document review, I'm not going to  
7 argue that here; but it seems to me that -- based  
8 on what you just said -- we would have to go back  
9 to them for every document that's marked  
10 confidential, including those that are obviously  
11 not confidential -- which Mr. Mulroy at the last  
12 hearing said, Well, they're obviously not  
13 confidential -- based on what you just said, we  
14 would still have to clear those with Peoples  
15 before you could use them?

16 JUDGE SAINSOT: Right. Right. You could --  
17 no, not use them, before you could publish them.  
18 There's a big difference between --

19 MR. JOLLY: I understand that --

20 JUDGE SAINSOT: -- publishing documents and  
21 using them.

22 MR. JOLLY: -- using them in a public way --

1 JUDGE SAINSOT: Right.

2 MR. JOLLY: -- and to put -- attaching them to  
3 testimony that's filed publically or -- in  
4 whatever manner. I mean, if that's what the  
5 intent was, then that's the process we'll go  
6 through; but that was not my understanding of  
7 what your ruling was last time.

8 JUDGE SAINSOT: I still -- I mean, I thought  
9 we went through the whole situation with the  
10 trial and how you don't have to clear things just  
11 prior to trial. You don't have to -- I mean, you  
12 could file something under seal. There are all  
13 sorts of ways you could get around -- well, you  
14 could comply with the protective order without,  
15 you know --

16 MR. JOLLY: I'm just trying to understand how  
17 to comply with this protective order --

18 JUDGE SAINSOT: Okay.

19 MR. JOLLY: -- and if it means -- if complying  
20 with the protective order means that we have to  
21 send every document or a Bates number -- the  
22 Bates number page of every document that we

1 anticipate that we would use in public testimony  
2 or, you know, use in any public way, if we --  
3 every document that's stamped confidential to  
4 Peoples for their thumbs up, thumbs down, then if  
5 that's the process, then that's the process; but,  
6 I guess my understanding -- again, my  
7 understanding of the ruling last time was that by  
8 limiting the protective order to those documents  
9 which contain proprietary information which,  
10 again, I think you agree with, is a more narrow  
11 definition than confidential, that things that  
12 are not proprietary -- clearly not proprietary,  
13 we would not have to go through the process of  
14 notifying Peoples of -- that we think these  
15 particular documents are not worthy of -- are not  
16 protected by the protective order.

17 JUDGE SAINSOT: Yeah, I don't know whether  
18 that's an issue that is -- I mean, I have no idea  
19 what kind of documents you have, so I don't know  
20 whether that's an issue. I just know that the  
21 order that I got from Mr. Mulroy on this issue  
22 only had those two things in it. So based on

1     that, I didn't think there was anything else that  
2     was at issue. I mean, are there documents that  
3     are confidential but not proprietary or  
4     attorney/client?

5           MR. JOLLY: I guess that's the question you  
6     have to ask Mr. Mulroy.

7           JUDGE SAINSOT: I mean, is this really an  
8     issue?

9           MR. JOLLY: I think there are a lot of  
10    documents on there that don't have any numbers on  
11    them, for instance. Proprietary strikes me as  
12    something that is akin to a trade secret or  
13    something like that as opposed to information  
14    that might be embarrassing or might -- that they  
15    prefer not be for the public eye. But, there are  
16    a lot of documents just, you know, that don't  
17    contain numbers or talk about strategies --  
18    business strategies that we might want to use but  
19    are nonetheless marked confidential which Peoples  
20    may consider to be confidential, I don't know.

21          JUDGE SAINSOT: Well, that's why we have a  
22    procedure, so at least when you come before me on

1     this, there's some understanding of where you two  
2     differ and I could rule on it quickly.

3           MR. JOLLY:   Again, I suppose, then, if a  
4     document doesn't contain proprietary information,  
5     which is the scope of the protective order, I,  
6     you know -- again, I thought the point of the  
7     order and your ruling last time was that we did  
8     not have to go to Peoples for --

9           JUDGE SAINSOT:   No.   You'll have to do that  
10    for every document and that gets me back to the  
11    only alternative I could think of which,  
12    Mr. Jolly, you would not want to do.   You would  
13    not want to be the one who is ordered to go  
14    through 47 boxes and a big huge DVD, would you?

15          MS. SODERNA:   We did that, though.

16          MR. CLARKE:   We've done that.

17          JUDGE SAINSOT:   Right.   Would you want to be  
18    ordered to have to do it in order to segregate  
19    certain documents?

20          MR. JOLLY:   I think we made our arguments last  
21    time, that was the appropriate procedure, you  
22    ruled against us.

1           JUDGE SAINSOT: All I'm trying to do is get  
2 the documents to you and have you work out  
3 whatever is at issue quickly. I don't see why  
4 this is such a big deal.

5           MR. JOLLY: That's fine. As long as we  
6 understand the scope of your ruling. It just  
7 seems to me that, you know -- I won't belabor it.  
8 I've made my point and if your ruling is that  
9 every document that's stamped confidential has to  
10 be -- has to be cleared with Peoples or given --  
11 Peoples be provided an opportunity to respond as  
12 to whether -- if we use it in a public manner, if  
13 that's your ruling, that's your ruling.

14          MR. MULROY: I'd like to just weigh in here.  
15 I don't -- the way you phrased it is not the way  
16 we intended it. We're not clearing or screening  
17 anything. You're asking us to remove the  
18 confidentiality stamp.

19          MR. JOLLY: Fine.

20          MR. MULROY: Let me just give you an example.  
21 We -- in between the last two status hearings, we  
22 met with ICC lawyers and Staff members and went



1 through about 50 documents we had marked  
2 attorney/client privilege. We showed them the  
3 documents, they identified from the log on the  
4 agreement that they would not consider it to be a  
5 waiver of the attorney/client privilege. They  
6 looked at them, some they -- some we waived the  
7 privilege on, some they said -- indicated they  
8 didn't want. The process took about 50 minutes,  
9 that's what I envision here. You seem to suggest  
10 that we're exercising some clearance.

11 The reason why we're suggesting this  
12 procedure is that we produced to you everything  
13 without screening. Normally -- instead of  
14 getting 47 boxes, I suppose you'd get 25 boxes  
15 and the rest you wouldn't be able to look at at  
16 all. The advantage of this procedure was, you  
17 got to look at everything until -- until it seems  
18 that we're acting in bad faith by refusing to  
19 take a confidentiality stamp off or a proprietary  
20 stamp off, it seems to me there shouldn't be an  
21 issue.

22 MR. JOLLY: I'm not -- I understand what you

1     did and I understand why you did it and my only  
2     question -- our only question, I think was that,  
3     it seemed to us -- and we raised this at the last  
4     hearing -- was that the scope of the  
5     confidentiality agreements and the scope of the  
6     protective order aren't necessarily the same.

7             At the last hearing we asked for a  
8     clarification as to what the interplay of the  
9     two -- the two sets of documents are and we got a  
10    ruling at that hearing, which we understood to  
11    mean what we understood it to mean, the  
12    protective order that was issued didn't seem to  
13    reflect that ruling. Your letter -- subsequent  
14    letters indicating that the confidentiality  
15    agreements are still in effect did not seem  
16    consistent with that, so we just merely asked for  
17    a clarification.

18            And, so that's -- and if the  
19    understanding is now that we have to go through  
20    procedures for each and every document that's  
21    marked confidential under both the  
22    confidentiality agreement and the protective

1     order, you know, that's -- we better understand  
2     the ruling.

3             MR. MULROY:   There's no procedure.

4             MR. JOLLY:    Sure there is.

5             JUDGE SAINSOT:  In a protective order there is  
6     some.

7             MR. MULROY:   You send me an e-mail with the  
8     Bates stamp number and we respond, hopefully the  
9     same day, saying, We hereby waive the  
10    confidentiality --

11            MR. JOLLY:    I agree that it will probably be  
12    that smooth.  I'm not suggesting that this is,  
13    like, you know, like, we're going to end up, you  
14    know, like, spending days and days talking about  
15    each and every document, I understand that --

16            MR. MULROY:   Okay.  Good.

17            MR. JOLLY:    -- I'm just trying to understand  
18    the scope of what we have to run by you is.

19            JUDGE SAINSOT:  Can I get -- I'm hoping I can  
20    get this voluntarily -- Peoples -- Counsel for  
21    Peoples word that the protective order covers the  
22    February 10th things and confidentiality

1     agreement covers everything before that, can we  
2     do that so that we're all clear on this?

3           MR. MULROY:   "The February 10th thing" means  
4     the 47 boxes plus the electronic discovery?

5           JUDGE SAINSOT:   Yes.

6           MR. MULROY:   Yes, you have our agreement on  
7     that.   And the reason you have the agreement is  
8     because we screened all the documents prior to  
9     the February production.

10          JUDGE SAINSOT:   Right.   Okay because otherwise  
11     I'm in a position of modifying the contract and  
12     that seems a little too -- what would be the word  
13     for that -- really too much like issuing a --  
14     okay.   Thank you.

15                 Now, where are we on the discovery --  
16     everything else?   This is behind us, okay, can we  
17     hear no more about the protective order unless  
18     you have an issue or you need to enforce it or  
19     something, God forbid?   Okay, can we move on?

20                         (No response.)

21                 Okay.   Where are we with the discovery?

22          MR. MULROY:   We're making wonderful progress

1 with the discovery. We have turned over all the  
2 electronic discovery that we talked to you about.  
3 There is a dispute between the parties as to  
4 whether we need to give them more or not. We  
5 filed a paper with you yesterday to frame the  
6 issues and I hope that you will allow everybody  
7 to respond however they want. It's a two-page  
8 paper saying what we searched for, what we  
9 produced and what additional information they  
10 want.

11 JUDGE SAINSOT: I haven't seen it but I can  
12 take a 10-minute break and look at it if it's two  
13 pages long.

14 MR. JOLLY: It's five pages, not two and  
15 there's attachments.

16 JUDGE SAINSOT: And there are attachments?

17 MR. JOLLY: Yeah. It's 14 pages total.

18 JUDGE SAINSOT: I'll do the best I can. Maybe  
19 it will be a 15-minute break.

20 MR. CLARKE: Okay. I think that will be  
21 helpful.

22 MR. BRADY: Staff would like to request the

1     ability to respond in writing.

2           JUDGE SAINSOT:   Okay.

3           MR. JOLLY:   I think we would like that same  
4     opportunity.

5           JUDGE SAINSOT:   All right.   It will be a short  
6     break.   Maybe it might be good for me to see how  
7     long it -- what's involved.

8           MR. MULROY:   We can show you a copy of the  
9     paper.

10          JUDGE SAINSOT:   Oh, good.   So you want a  
11     ruling on this and everybody wants to respond or  
12     certain people want to respond to it and this  
13     is -- does this only affect the electronic --

14          MR. MULROY:   Yes.

15          JUDGE SAINSOT:   Okay.   Is there other  
16     discovery that's --

17          MR. MULROY:   We have kind of side issues going  
18     on with this electronic discovery.   Staff, I  
19     think, had trouble opening some of the disks and  
20     I think Peoples' IT folks worked with Staff, I'm  
21     not sure what the status of that is but they're  
22     making progress.

1                   The City of Chicago sent us a letter  
2     asking us some questions about the kind of  
3     searching capabilities we have and I asked  
4     Mr. Jolly this morning if he would be interested  
5     in meeting with one of our IT people at Peoples  
6     either there or his IT person so they can talk  
7     directly about this. Some of these questions are  
8     technical and really depend on what the -- kind  
9     of computer software and computer hard drives  
10    that they use.

11                  And then we have -- I don't think we  
12    have any other discovery disputes, do we?  
13    There's some outstanding discovery that's not due  
14    yet, some discovery which we've answered and  
15    objected to.

16           MR. BRADY: Right. We -- to follow up on what  
17    Mr. Mulroy was talking about in regards to some  
18    disks that Staff had difficulty opening. As I  
19    understand, probably half of the disks -- I think  
20    it was maybe 15 to 18 disks we had a hard time  
21    downloading onto the server. We received 8 to  
22    this point and I was told this morning that we

1     should be receiving the remaining disks either  
2     today or tomorrow.

3           JUDGE SAINSOT:   You are converting this DVD  
4     into CDs or something like that?

5           MR. BRADY:   We were given 124 CDs or DVDs --  
6     actually, now up to maybe 136, they provided 12  
7     more -- and we've loaded them onto the server so  
8     we can do -- so Staff can do a search and look at  
9     a document -- retrieve the documents that way.  
10    We haven't completed that yet -- downloading all  
11    of the material from those disks onto our server  
12    and I'm not sure if -- I haven't heard yet if we  
13    have any ongoing problems with the disks that  
14    they've turned over that we had with the previous  
15    disks, hopefully not.  If not, I would anticipate  
16    that we would be able to get the disks loaded for  
17    our use by the early part of next week so we can  
18    start doing our searches.

19           JUDGE SAINSOT:   So you are on track with  
20    discovery?

21           MR. JOLLY:   With respect to the City and the  
22    CUB and the AG, we just received the disk the



1     28th of last week -- whatever the 28th was -- and  
2     CUB is in the process of uploading, downloading,  
3     whatever one does, the various DVDs and CDs.

4           MS. SODERNA:   We're about half-way done  
5     loading the CD/DVDs onto a hard drive, and  
6     haven't started review yet.

7           MR. JOLLY:   And based on conversations with  
8     Sean, I know that Staff had some problems just  
9     making their system mesh and they've had to have  
10    some conversations with Peoples' IT people.  I  
11    don't know if we've had those problems yet or  
12    whether we might face the same problems and  
13    hopefully if we do, you know, we won't have to  
14    reinvent the wheel and we can work them out; but  
15    it's still a fairly time-consuming process to  
16    transfer the disks to the hard drive.

17          MR. CLARKE:   Your Honor, with regard to being  
18    on track, we are on track with assembling the  
19    pieces.  But having received 124 or 130-something  
20    different disks, it's as if each of those is a  
21    different puzzle piece.  Until you put them all  
22    together, you can't even start to look at it.  So

1     we're on track with starting to put it together,  
2     but that doesn't at all indicate, you know, we're  
3     any -- we've made any progress along in the  
4     actual search.

5           JUDGE SAINSOT:   Have you tried putting them in  
6     the computer however you do that, whatever the  
7     term is?

8           MR. CLARKE:   Extensively.   The issue is  
9     putting them all in one place so that they can  
10    be --

11          MS. SODERNA:   We're also going to be  
12    purchasing software to assist us in the search.  
13    We are definitely moving and accessing all of the  
14    available technology to help us with this.

15          MR. JOLLY:   And just so you know what our  
16    plans are -- the idea of putting this in one  
17    location is that it gives different people the  
18    ability, you know, a secure location, password  
19    protected, different people the opportunity to  
20    search, as opposed to just everybody needing a  
21    disk so that more than one person can search the  
22    information at one time.   And, so, that's the

1 process we're going through now to put it in one  
2 location so it can be searched by more than one  
3 person.

4 JUDGE SAINSOT: All right. Is there any  
5 reason why I can't just rule on this after you  
6 file your responses?

7 MR. BRADY: Unless they need a reply.

8 MR. MULROY: We don't need to reply. I would  
9 like to have -- I would like -- I think I would  
10 like the opportunity to -- I don't want to say  
11 argue but I have to -- to argue it, to talk about  
12 it with you. We have been unable to reach a  
13 compromise with Staff, I'm not sure whether we  
14 could reach a compromise with the City or not  
15 because our IT people haven't talked to them yet,  
16 but we've gotten pretty close. For instance, the  
17 Staff wanted us to search, I don't know, 15 or 20  
18 additional Peoples' computers, okay, well we did  
19 that, that kind of thing, but we can't bring it  
20 to closure, so --

21 MR. CLARKE: Might I just suggest that -- this  
22 risks leaking into the argument and the merits of

1     it, it might be helpful just to make sure that --  
2     you know, to review the motion before we begin  
3     discussing it. I just think that if we're going  
4     to talk about it --

5           JUDGE SAINSOT: We're not going to discuss it  
6     in any length because if you're filing -- several  
7     people are filing responses, I mean, you don't  
8     have to --

9           MR. CLARKE: I may request to -- just to  
10    respond to it orally today, you know, in the  
11    interest of expedience.

12          JUDGE SAINSOT: All right. Give me five  
13    minutes with this and figure out how long it will  
14    take you to file a response and then -- to have a  
15    status hearing that you all can agree on quickly  
16    after that. This is discovery, so it should be  
17    quick and fairly easy, okay, as easy as legal  
18    issues get.

19                               (Whereupon, a brief  
20                               recess taken.)

21          JUDGE SAINSOT: How long will it take to file  
22    responses to this motion?

1           MR. WEGING:   Staff would like to have until  
2   August 13th to file their response.   Next week is  
3   incredibly big for me and it will take some time  
4   to get it done, so we'd ask until August 13th to  
5   file a response.

6           JUDGE SAINSOT:   August 13th?

7           MR. WEGING:   Yeah, that's -- I think -- next  
8   Friday, a week from this Friday.

9           JUDGE SAINSOT:   Okay.   Mr. Clarke, if you want  
10   to argue orally, I would strongly urge you to  
11   argue at that time rather than argue now and  
12   waiting for me -- trusting my memory or the  
13   transcripts to pull me through --

14          MR. CLARKE:   Okay.

15          JUDGE SAINSOT:   -- I think that makes better  
16   sense.

17                        So August 13th is -- it's Friday the  
18   13th.

19          MR. WEGING:   This was a request for a written  
20   response to the motion.   Were you looking for a  
21   status date?

22          JUDGE SAINSOT:   Right.   Shortly after that.

1           MR. WEGING:   The next week some time.

2           JUDGE SAINSOT:   Monday is clear.   Tuesday

3   afternoon -- Tuesday morning is clear for me.

4           JUDGE SAINSOT:   Wednesday I have some time in

5   the later afternoon.

6           MR. MULROY:   Monday would be the only one for

7   me, of those three.

8           MR. BRADY:   Just so I'm on the same page, the

9   matters that we'd be talking about at that point

10   would be getting an idea of where we're at with

11   having the electronic documents loaded and --

12          JUDGE SAINSOT:   I will rule on the motion.   I

13   will have your response by Friday afternoon --

14          MR. BRADY:   Right.

15          JUDGE SAINSOT:   -- and then anything else we'd

16   take up at that time as it becomes available.

17                 Monday -- Mr. Weging, Monday doesn't

18   work for you?

19          MR. WEGING:   Well, I have a couple things

20   scheduled for Monday morning but I guess Monday

21   afternoon.

22          JUDGE SAINSOT:   Monday afternoon at 1:00?   So

1       it's unanimous, Monday afternoon at 1:00.

2                   Is there anything further?

3       MR. BRADY:  You had asked if there are any  
4       other outstanding discovery matters and there  
5       probably will be regarding review of the  
6       privileged log.  There were a couple of  
7       documents -- there's a potential regarding that.  
8       Staff may be filing a motion on that.

9       MR. MULROY:  Mr. Brady, is there.  There are  
10      three documents at issue.  Is there a way that we  
11      can simply present them to the Judge and argue  
12      about them, rather than make you go through  
13      writing a motion and me responding?

14      MR. BRADY:  I don't -- I haven't necessarily  
15      seen the document since I was absent for --

16      MR. MULROY:  Jim has.

17      MR. WEGING:  Yes, I have.

18      MR. MULROY:  Anyway, if you decide to do  
19      that --

20      MR. BRADY:  You would prefer that method?

21      MR. MULROY:  We would very much prefer it.

22      MR. WEGING:  Well, maybe we can set that up

1     for the 16th as well. I mean, there really are  
2     just -- I think two of them are actually the same  
3     document twice, so that if -- it's really --  
4     they're not extensive -- long documents either,  
5     it's all just a question of -- whether or not  
6     they're privileged or not.

7           JUDGE SAINSOT: Okay. So you are going to  
8     bring all the privileged material and have me  
9     rule on it on the 16th --

10          MR. BRADY: Three pages.

11          MR. WEGING: Three pages.

12          JUDGE SAINSOT: -- all three documents? Okay.  
13     I think I can handle that.

14          MR. WEGING: And we think two of the pages are  
15     actually identical. It's just one of those  
16     things that the same document got picked up  
17     twice. We didn't see any difference between the  
18     two.

19          JUDGE SAINSOT: Okay. So, for the record, the  
20     August 16th hearing will include -- sofar as we  
21     know -- two matters. And that is Peoples' motion  
22     for discovery order regarding the electronic data



1 production; and then Staff's wish for a ruling on  
2 certain matters that Peoples is alleging is  
3 privileged; is that okay? So we're all clear?

4 MR. BRADY: Mm-hmm.

5 And I guess the other thing I'd like to  
6 get clarified is the -- regarding our schedule in  
7 this docket, I'd like to try and tie things down  
8 as best as possible to, you know, to dates.

9 We have a schedule that's outstanding  
10 right now and, so, it's difficult for Staff,  
11 since we haven't had the ability to review --  
12 since we haven't downloaded all the electronic  
13 documents to start our review on that to  
14 determine how long it takes to review those  
15 documents, but I'm assuming you're going to want  
16 a written motion to adjust the schedule or is  
17 that something we can handle like we've been  
18 handling in these status hearings? Is that  
19 something we could possibly address on the 16th  
20 or what would -- I guess it's more of a question  
21 of what is your --

22 JUDGE SAINSOT: You know, I don't really care

1     one way or another but if you have something  
2     complicated that -- to present, then it should be  
3     in a motion.  If it's not that complicated like  
4     the three documents, you know, we don't have to  
5     have a written motion.

6           MR. BRADY:  Right.  Okay.

7           JUDGE SAINSOT:  I would strongly urge the  
8     parties, though, to do what they have to do to  
9     get discovery behind you quickly, please, so we  
10    don't have to deal with this anymore.

11                   Anything further?

12           MR. CLARKE:  I'd just like to add to the  
13    record that for the AG, we're trying to do that.  
14    We want to do that but the new material we have  
15    we estimate to be roughly 5 million pages, so  
16    it's a big task.

17           JUDGE SAINSOT:  Okay.  Thank you.

18                               (Whereupon, the hearing in the  
19                               above-entitled matter was  
20                               continued until August 16, 2004,  
21                               at 1:00 p.m.)

22